

§ 202.119 Rule 19: Fees of witnesses.

Witnesses subpoenaed before the presiding officer, and witnesses whose depositions are taken, shall be entitled to the same fees and mileage as are paid for like services in the courts of the United States. Fees and mileage shall be paid by the party at whose instance the witness appears or the deposition is taken.

§ 202.120 Rule 20: Official notice.

Official notice shall be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical or scientific fact of established character: *Provided*, That the parties shall be given notice of matters so noticed, and shall be given adequate opportunity to show that such facts are erroneously noticed.

§ 202.121 Rule 21: Intervention.

At any time after docketing of a proceeding and before commencement of a hearing, oral or written, therein, the presiding officer may, upon petition, and for good cause shown, permit any person to intervene therein. The petition shall state with preciseness and particularity: (a) The petitioner's relationship to the matters involved in the proceeding; (b) the nature of the material the petitioner intends to present in evidence; (c) the nature of the argument the petitioner intends to make; and (d) the reasons why the petitioner should be allowed to intervene. Any such petition, and notice of the order thereon, shall be served on the parties and made a part of the record in the proceeding.

§ 202.122 Rule 22: Ex parte communications.

(a) At no stage of the proceeding between its docketing and the issuance of the final decision shall the presiding officer or judicial officer discuss ex parte the merits of the proceeding with any party, or attorney or representative of a party: *Provided*, That procedural matters shall not be included within this limitation; and *Provided further*, That the presiding officer or judicial officer may discuss the merits of the case with such a person if all parties to the proceeding or their attor-

neys or representatives have been served with notice and an opportunity to participate. A memorandum of any such discussion shall be included in the record.

(b) No party, or attorney or representative of a party, or other person not an employee of the Department, shall make or knowingly cause to be made to the presiding officer or judicial officer an ex parte communication relevant to the merits of the proceeding.

(c) If the presiding officer or judicial officer receives an ex parte communication in violation of this section, the one who receives the communication shall place in the public record of the proceeding:

(1) Such communication if written, or a memorandum stating the substance of such communication if oral; and

(2) A copy of any written response or a memorandum stating the substance of any oral response thereto.

(d) Copies of all such items placed or included in the record, as provided in this section, shall be served on all parties.

(e) For purposes of this section "ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include a request for a status report on any matter or the proceeding.

§ 202.123 Rule 23: Action by Secretary.

The Secretary may act in the place and stead of a presiding officer or the judicial officer in any proceeding hereunder, or any matter in connection therewith.

RULES OF PRACTICE APPLICABLE TO ALL OTHER PROCEEDINGS

SOURCE: Sections 202.200 and 202.210 were added at 72 FR 19109, Apr. 17, 2007, unless otherwise noted.

§ 202.200 Scope and applicability of rules of practice.

The Uniform Rules of Practice for the Department of Agriculture promulgated in Subpart H of Part 1, Subtitle A, Title 7, Code of Federal Regulations, are the Rules of Practice applicable to

adjudicatory, administrative proceedings under the Packers and Stockyards Act, as amended (7 U.S.C. 181 *et seq.*). In addition, the Supplemental Rules of Practice set forth in this part shall be applicable to such proceedings.

§ 202.210 Stipulations.

(a) The Administrator may enter into a stipulation with any person operating subject to the Packers and Stockyards Act, as amended (P&S Act), prior to issuing a complaint that seeks a civil penalty against that person.

(1) The Administrator will give the person notice of an alleged violation of the P&S Act or regulations and provide an opportunity for a hearing;

(2) The person has the option to expressly waive the opportunity for a hearing and agree to pay a specified civil penalty within a designated time;

(3) The Administrator will agree to settle the matter by accepting payment of the specified civil penalty within a designated time;

(4) If the person does not agree to the stipulation, or does not pay the penalty within the specified time, the Administrator may issue an administrative complaint citing the alleged violation; and

(5) The civil penalty that the Administrator proposed in a stipulation agreement has no bearing on the civil penalty amount that may be sought in a formal administrative proceeding against the same person for the same alleged violation.

(b) [Reserved]

PART 203—STATEMENTS OF GENERAL POLICY UNDER THE PACKERS AND STOCKYARDS ACT

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203.19 Statement with respect to packers engaging in the business of livestock dealers or buying agencies.

AUTHORITY: 7 CFR 2.22 and 2.81.

§ 203.1 [Reserved]

§ 203.2 Statement of general policy with respect to the giving by meat packers of meat and other gifts to Government employees.

(a) In recent months, the Department has received information, confirmed by investigation, that a number of packers subject to the Packers and Stockyards Act have made gifts of meat to Government employees responsible for conducting service activities of the Department. Such gifts have the implications of fraud, even if not made specifically for the purpose of influencing these employees in the performance of their duties.

(b) It is a violation of the Meat Inspection Act for any person, firm, or corporation to give to any employee of the Department performing duties under such act anything of value with intent to influence such employee in the discharge of his duties, or for such employee to receive from any person, firm, or corporation engaged in interstate or foreign commerce any gift given with any intent or purpose whatsoever (21 U.S.C. 90). Under the Federal meat grading regulations, the giving or